

Introduction to Potential Site Study

Background

BP Cherry Point Refinery (BP), a division of British Petroleum Corporation, proposes to construct and operate a 720-megawatt power generation facility in Whatcom County, Washington. The facility would be 4 to 6 miles northwest of the City of Ferndale. The Energy Facility Site Evaluation Council (EFSEC or the Council) is the single nonfederal authority for licensing major energy facilities in the state of Washington, and BP has indicated its intent to submit an Application for Site Certification (ASC) to EFSEC.

On March 12, 2001, BP submitted a request to EFSEC for a Potential Site Study (PSS), as provided for in Chapter 463-22 of the Washington Administrative Code (WAC). The PSS is voluntary, but it is also a significant effort for both EFSEC and the applicant. The benefit of this process is to improve the permit review process during the adjudicatory process by filing a more complete and thorough application. After a competitive selection process, EFSEC contracted with Shapiro and Associates, Inc. (SHAPIRO), an independent consultant to EFSEC, to prepare the PSS. The contract was signed on April 18, 2001, and work commenced immediately.

EFSEC has determined that the PSS should meet two basic requirements: (1) identify the potential environmental, health and safety, social, and regulatory issues related to the proposed energy facility; and (2) provide BP and its consultants with guidance beyond that provided in WAC 463-42 on the information to be included in the ASC. In addition, the PSS should reflect the issues, comments, and concerns of the agencies involved in the review, as determined during the agency and public outreach process.

The remainder of this PSS report consists of the following sections:

- Chapter I—Coordination and Interaction
- Chapter II—Environmental Issues
- Chapter III—Application Guidelines and Criteria
- References
- Appendices

The following describes the overall EFSEC review process.

EFSEC Review Process

Application for Site Certification

Based on the guidelines presented in the Potential Site Study, BP will complete the required studies and prepare the ASC. Submittal of the ASC to the Council will initiate the EFSEC application review process, which will include the following steps:

- Ensure that the information in the ASC is complete and objective. EFSEC's independent consultant will review this document and submit its findings to EFSEC as required by Revised Code of Washington (RCW) 80.50.071(1)(a).

- Notify those on the project mailing list that a complete application has been filed with the Council.
- Distribute the ASC to state agencies and stakeholders for review.
- Make copies of the ASC available for public reference at local libraries.

Within 60 days of receiving the complete ASC, the Council will hold an initial public meeting on the proposed project. The meeting will be held in the proposed project vicinity after notifying public officials, publishing notices, and issuing news releases. The initial public meeting has several purposes, including:

- to inform the public of the proposed project and of the Council's review process, and
- to invite the public to comment on the project application.

Formerly, the initial public meeting also would be used to determine the proposed project's consistency with local land use ordinances. EFSEC rules have changed recently, and the land use hearing is no longer held at the initial public meeting. However, because the proposed site for the BP Cherry Point Cogeneration Project is designated "heavy impact industrial," the land use hearing may be held at the initial public meeting for this project.

Environmental Impact Statement

Based on the information gathered during the review of the ASC by the Council's independent consultant, and on the public comments received at the initial public meeting and through scoping, EFSEC will prepare and issue a draft environmental impact statement (EIS) for public comment pursuant to the Washington State Environmental Policy Act (SEPA). This document summarizes the potential environmental impacts for the proposed project.

The EIS should be a joint SEPA/National Environmental Policy Act (NEPA) document, if possible, to meet the anticipated need for required federal environmental review and permits in addition to the EFSEC site certification for the project. The U.S. Army Corps of Engineers and Bonneville Power Administration (BPA) could both be required to prepare a NEPA Environmental Assessment or an EIS as part of their respective decision-making processes associated with: (1) BP's request to interconnect to BPA transmission lines associated with this project, and (2) BP's proposed location of the project within wetland areas. The EIS will address the direct and cumulative impacts of the proposed power generation project on air quality, natural gas supplies and distribution, project-related transmission lines, and the BPA transmission grid.

The public will be notified when the draft EIS is issued and will have the opportunity to comment at public hearings and through written correspondence. At this point, the draft EIS will be revised and responses will be prepared for all comments. The revised document, the final EIS, will be published prior to the final council decision regarding the ASC.

Adjudicative Proceedings

Unless the EFSEC Expedited Process (see description below) is implemented, EFSEC's certification process calls for the Council to hold formal hearings, or "adjudicative proceedings," on the proposed project issues to allow the proponent and opponent(s) to present information before the Council to support their cases. The purpose of the adjudicative proceedings is for the Council to resolve remaining issues and make a siting recommendation regarding the proposal to the Governor.

These trial-like proceedings are conducted according to RCW 34.05. These provisions emphasize the right of all parties to a fair hearing, and require legal due process in the administration of the proceedings. To participate in the proceedings, parties likely to be affected by impacts of the proposed energy facility must petition the Council for “intervenor” status.

Interested parties, Indian tribes, public or environmental groups, citizens of Canada, or local, state, or federal agencies may petition the Council to become intervenors in the proceedings. Participants who are granted legal status as intervenors can call expert witnesses, examine and cross-examine witnesses, and join all aspects of the legal process.

The State of Washington is always provided intervenor status and is represented by the Counsel for the Environment, a state-appointed Assistant Attorney General. The role of the Council for the Environment at the hearings is to represent the broad interests of all Washington citizens in protecting the quality of the environment.

The extensive adjudicative proceedings cover contested issues or project impacts, including environmental, socioeconomic, and public safety concerns. Through examination and cross-examination by the proponent, intervenors, Counsel for the Environment, and EFSEC members themselves, each potential impact is examined in great detail. Parties and intervenors may have legal counsel represent them during the proceedings.

The testimony and exhibits introduced during these proceedings (including the EIS) are the basis for the record the Council will refer to when determining whether to recommend project approval or disapproval to the Governor. Information from these proceedings is also used to determine conditions for construction and operation of the project. The proponent must meet these conditions if the Governor approves the project.

Expedited Process

Under WAC 463-43-030, the ASC review can proceed under an alternative process, the Expedited Process. This review may be followed when the Council finds that aspects of the proposed project are not significant enough to warrant a full review of the application for certification under the provisions of RCW 80.50. These criteria include:

- The environmental impact of the proposed energy facility,
- The area potentially affected,
- The cost and magnitude of the proposed energy facility, and
- The degree to which the proposed energy facility represents a change in land use.

Any proponent may request the Expedited Process. If the Council agrees to implement the Expedited Process, the adjudicative proceedings would be waived, potentially decreasing the time needed for a site certification decision. The initial public hearing, preparation of the EIS, and the regulatory procedures associated with permit approvals would still apply, however.

Air and Water Discharge Permits

While conducting the adjudicative proceedings, the Council initiates its process for developing air emission and water discharge permits. The BP Cherry Point Cogeneration Project will be required to obtain a Prevention of Significant Deterioration (PSD) permit, which will establish the conditions and limits of permitted air emissions. The proponent will

also be required to fulfill the requirements for a state water discharge permit for cooling tower blowdown (should water cooling be selected) and stormwater discharge. As currently proposed, the project will not discharge directly into the state's waters during either construction or operation, but will discharge to the refinery's industrial wastewater treatment system through a separate National Pollutant Discharge Elimination System (NPDES) permit administered by EFSEC. The existing NPDES permit for the BP refinery (administered by the Washington State Department of Ecology [Ecology]) may need to be modified as a result of stormwater treatment and discharge from the proposed cogeneration site.

As part of this process, the Council is required by state and federal law to prepare draft PSD and NPDES permits for public comment. The U.S. Environmental Protection Agency (EPA) has delegated responsibility for issuing PSD and NPDES permits to the Council for projects under EFSEC jurisdiction. Any permit issued will meet all local, state, and federal Clean Air Act or Clean Water Act standards.

Council Considerations

After the adjudicative proceedings close, Council members will study the project record at length. They will carefully weigh all the evidence before them and recommend to the Governor whether to approve or deny the project application. If the Council finds that the project should proceed, it will recommend the project's approval and will develop a Site Certification Agreement (SCA) to be signed by the Governor. The SCA has all of the environmental, social, economic, and engineering conditions the proponent must meet for construction and operation throughout the life of the project.

If the Council finds that the project will have significant impacts that cannot be mitigated, or that the project is not in the best interest of the state, it will recommend to the Governor that the project be denied.

The Governor has 60 days to consider the Council's recommendation and can take one of the following actions:

- approve the application and execute the draft SCA,
- deny the application, or
- direct the Council to reconsider certain aspects of the project.

Anticipated EFSEC Review Schedule

Based on EFSEC's current understanding of BP's planned schedule for submittal of the ASC, the potential review timeline for the BP Cherry Point Cogeneration Project is presented below. The actual schedule, however, will depend on the completeness and accuracy of the ASC, the number and magnitude of key issues, the number of intervenors, and other factors related to the review process.

Application submitted	fourth quarter, 2001
Draft EIS issued for comment	first quarter, 2002
Preliminary final EIS issued	second quarter, 2002
Adjudicative proceedings	second quarter, 2002
Final EIS issued	third quarter, 2002
Recommendation to the Governor	third quarter, 2002
Governor's decision	third or fourth quarter, 2002